

1 NEAL S. SALISIAN, SBN 240277
2 neal.salisian@salisianlee.com
3 GLENN R. COFFMAN, SBN 305669
4 glenn.coffman@salisianlee.com
5 JARED T. DENSEN, SBN 325164
6 jared.densen@salisianlee.com
7 **SALISIAN | LEE LLP**
8 550 South Hope Street, Suite 750
9 Los Angeles, California 90071-2924
10 Telephone: (213) 622-9100
11 Facsimile: (800) 622-9145

12 MARISA D. POULOS (SBN 197904)
13 marisa.poulos@balboacapital.com
14 **BALBOA CAPITAL CORPORATION**
15 575 Anton Boulevard, 12th Floor
16 Costa Mesa, California 92626
17 Tel: (949) 399-6303

18 Attorneys for Plaintiff
19 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

20
21
22
23
24
25
26
27
28
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 AMERIS BANK, a Georgia state-
17 chartered banking corporation, doing
18 business as BALBOA CAPITAL
19 CORPORATION,

20 Plaintiff,

21 vs.

22 MONTANTE PLASTIC SURGERY &
23 AESTHETICS, LLC, a Virginia Limited
24 Liability Company; STEVEN
25 MONTANTE, an individual; SHELLY
26 MONTANTE, an individual,

27 Defendants.

28 Case No.:

**PLAINTIFF AMERIS BANK D/B/A/
BALBOA CAPITAL
CORPORATION'S COMPLAINT
FOR:**

- 1. BREACH OF EQUIPMENT
FINANCING AGREEMENT NO.
1**
- 2. BREACH OF PERSONAL
GUARANTY NO. 1**
- 3. BREACH OF EQUIPMENT
FINANCING AGREEMENT NO.
2**
- 4. BREACH OF PERSONAL
GURANTY NO. 2**

1 Plaintiff Ameris Bank, a Georgia state-chartered banking corporation doing
2 business as Balboa Capital Corporation, (“Balboa” or “Plaintiff”), alleges as
3 follows:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff Ameris Bank d/b/a Balboa Capital Corporation (“Balboa” or
6 “Plaintiff”) is, and at all times relevant to this action was, a Georgia state-chartered
7 banking corporation with Balboa Capital Corporation as one of its divisions, which
8 division has its principal place of business in the State of California, County of
9 Orange.

10 2. Defendant Montante Plastic Surgery & Aesthetics, LLC (“Montante”)
11 is, and at all times relevant to this action was, a Virginia limited liability company
12 with its principal place of business in the City of Richmond, State of Virginia.

13 3. Defendant Steven Montante (“Steven”), an individual, is and at all
14 times relevant to this action was, a resident of the City of Richmond, State of
15 Virginia, and was an officer, director, shareholder, agent and/or owner of Defendant
16 Montante.

17 4. Defendant Shelly Montante (“Shelly”), an individual, is and at all
18 times relevant to this action was, a resident of the City of Richmond, State of
19 Virginia, and was an officer, director, shareholder, agent and/or owner of Defendant
20 Montante.

21 5. Plaintiff is informed and believes, and thereon alleges, that all
22 Defendants, including any members or shareholders of any defendant entities, are
23 all located outside of California.

24 6. Plaintiff is informed and believes, and thereon alleges, that each
25 Defendant, directly or indirectly, or through agents or other persons, was engaged
26 with some or all of the other Defendants in a joint enterprise for profit, and bore
27 such other relationships to some or all of the other Defendants so as to be liable for
28 their conduct with respect to the matters alleged below. Plaintiff is informed and

1 believes and thereon alleges that each Defendant acted pursuant to and within the
2 scope of the relationships alleged above, that each Defendant knew or should have
3 known about the foregoing, and that each Defendant authorized, ratified, adopted,
4 approved, controlled, and aided and abetted the conduct of all other Defendants.

5 7. The obligations sued upon herein are commercial in nature and the
6 Complaint herein is not subject to the provisions of California Civil Code section
7 1801, *et seq.* (Unruh Retail Installment Sales Act), and/or California Civil Code
8 section 2981, *et seq.* (Rees-Levering Motor Vehicle Sales and Finance Act).

9 8. Pursuant to the Equipment Financing Agreements and Guaranties
10 described herein below, defendant Montante and defendants Steven and Shelly
11 agreed that the documents would be governed by the laws of the State of California.
12 In addition, the Equipment Financing Agreements provides, in pertinent part, as
13 follows:

20 9. Jurisdiction. This Court has jurisdiction over the case pursuant to 28
21 U.S.C. § 1332(a).

22 10. Venue. The venue is proper in this judicial district pursuant to 28
23 U.S.C. § 1391(b)(2), and in the Southern Division pursuant to 28 U.S.C. § 84(c)(3).

FIRST CAUSE OF ACTION

(Breach of Equipment Financing Agreement No. 1)

(Against Montante)

27 11. Balboa alleges and incorporates by reference each and every allegation
28 contained above, inclusive, as though each were fully set forth here.

1 12. Prior to March 2021, Balboa is informed and believes that Montante
2 initiated and engaged with Invasive Inc. - FP, located at 17 Hughes Irvine, CA 92618
3 (“Equipment Vendor No. 1”), in order to coordinate the acquisition and financing
4 of certain equipment (hereinafter referred to as “Collateral No. 1”) for its business.
5 Equipment Vendor No. 1 worked with Montante in the selection of Collateral No. 1
6 and in coordinating its delivery.

7 13. Thereafter, Balboa is informed and believes, and therefore alleges, that
8 Equipment Vendor No. 1 initiated and coordinated submission of Defendant’s
9 electronic credit application to Balboa and other financial institutions. Upon
10 review, Montante concluded that Balboa offered agreeable terms to finance
11 Collateral No. 1 commensurate with its requirements. Thereafter, Equipment
12 Vendor No. 1 accumulated and submitted to Balboa the requisite signatories,
13 documentation, and financial information from Defendant to finance Collateral No.
14 1 being supplied by Equipment Vendor No. 1.

15 14. On or about March 30, 2021, Montante executed a certain written
16 Equipment Financing Agreement No. 355015-000 (“EFA No. 1”), under the terms
17 of which Balboa loaned to Montante the principal sum of Seventy-Eight Thousand
18 Four Hundred Forty Dollars and Zero Cents (\$78,440.00), in order to finance
19 Collateral No. 1 for its business. EFA No. 1 required Montante to make six (6)
20 monthly payments of \$99.00, and sixty (60) monthly payments of \$1,739.14,
21 payable on the 29th day of each month, beginning May 29, 2021. A true and
22 correct copy of EFA No. 1 is attached as **Exhibit A** and is incorporated here by
23 reference.

24 15. The last payment received by Balboa was credited toward the monthly
25 payment due for October 29, 2023. Therefore, on or about November 29, 2023,
26 Montante breached EFA No. 1 by failing to make the monthly payment due on that
27 date. Defendant Montante’s failure to make timely payments is a default under the
28 terms of EFA No. 1.

1 16. In accordance with EFA No. 1, and as a proximate result of
2 Montante's default thereunder, Balboa declared the entire balance of the payments
3 under EFA No. 1 to be immediately due and payable to Balboa. Therefore, there
4 became due the sum of \$60,869.90. This amount is exclusive of interest, attorneys'
5 fees and costs, no portion of which has been paid by Montante.

6 17. Balboa has performed all of the terms, conditions, and covenants
7 required to be performed by it under the terms of EFA No. 1, except as excused or
8 prevented by the conduct of Montante.

9 18. In addition, the terms of EFA No. 1 provide that Montante is liable to
10 Balboa for late charges on all payments not made in a timely manner. As of the
11 date of the filing of Balboa's Complaint, late charges in the sum of \$313.05 are
12 now due and owing.

13 19. As a proximate result of Montante's breach of EFA No. 1, Balboa has
14 been damaged in the total sum of \$61,182.95, plus prejudgment interest from
15 November 29, 2023, until the entry of judgment herein.

16 20. Further, under the terms of EFA No. 1, Montante promised to pay all
17 costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement
18 of EFA No. 1. Therefore, Balboa requests the Court award Balboa its reasonable
19 attorneys' fees and costs as against Montante.

20 21. EFA No. 1 also provides Balboa the remedy of possession of
21 Collateral No. 1 and to obtain an order that Balboa may, in accordance with
22 applicable state law, sell the remaining Collateral No. 1 and apply the net proceeds
23 from the sale to the remaining loan balance. Alternatively, if possession cannot be
24 had, Balboa is entitled to recover the value of Collateral No. 1.

25

26

27

28

SECOND CAUSE OF ACTION

(Breach of Guaranty No. 1)

(Against Steven and Shelly)

22. Balboa alleges and incorporates by reference each and every allegation contained above, inclusive, as though each were fully set forth here.

23. Concurrent with the execution of EFA No. 1 and in order to induce Balboa to enter into EFA No. 1 with Montante, Steven and Shelly guaranteed, in writing, the payment of the then existing and future indebtedness due and owing to Balboa under the terms of EFA No. 1. A true and correct copy of the written Personal Guaranty signed by Steven and Shelly (“Guaranty No. 1”) is attached as **Exhibit A** (page 1) and incorporated herein by reference.

24. Balboa has performed all the terms, conditions, and covenants required to be performed by Balboa under the terms of Guaranty No. 1, except as excused or prevented by the conduct of Steven and Shelly.

25. Following a default of Montante under the terms of EFA No. 1, Balboa demanded Steven and Shelly make the payments required under EFA No. 1. Steven and Shelly failed to meet Guaranty No. 1 obligations and make the payments required under EFA No. 1.

26. Pursuant to the terms of Guaranty No. 1, the sum of \$61,182.95, plus prejudgment interest from November 29, 2023, is due and payable to Balboa from Steven and Shelly. This Complaint, in addition to previous demands, shall constitute further demand upon Steven and Shelly to pay the entire indebtedness due and owing from Montante to Balboa under the terms of EFA No. 1.

27. Under the terms of the Guaranty, Steven and Shelly promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of EFA No. 1 and Guaranty No. 1. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs, as against Steven and Shelly.

THIRD CAUSE OF ACTION
(Breach of Equipment Financing Agreement No. 2)
(Against Montante)

28. Balboa alleges and incorporates by reference each and every allegation contained above, inclusive, as though each were fully set forth here.

29. Prior to March 2021, Balboa is informed and believes that Montante initiated and engaged with Cartessa Aesthetics, LLC-FP, located at 175 Broadhollow Road, Melville, NY 11747 (“Equipment Vendor No. 2”), in order to coordinate the acquisition and financing of certain equipment (hereinafter referred to as “Collateral No. 2”) for its business. Equipment Vendor No. 2 worked with Montante in the selection of Collateral No. 2 and in coordinating its delivery.

30. Thereafter, Balboa is informed and believes, and therefore alleges, that Equipment Vendor No. 2 initiated and coordinated submission of Defendant's electronic credit application to Balboa and other financial institutions. Upon review, Montante concluded that Balboa offered agreeable terms to finance Collateral No. 2 commensurate with its requirements. Thereafter, Equipment Vendor No. 2 accumulated and submitted to Balboa the requisite signatories, documentation, and financial information from Defendant to finance Collateral No. 2 being supplied by Equipment Vendor No. 2.

31. On or about March 31, 2021, Montante executed a certain written Equipment Financing Agreement No. 355015-001 (“EFA No. 2”), under the terms of which Balboa loaned to Montante the principal sum of Sixty-Four Thousand Two Hundred Dollars and Zero Cents (\$64,200.00), in order to finance Collateral No. 2 for its business. EFA No. 2 required Montante to make six monthly payments of \$99.00, and sixty (60) monthly payments of \$1,421.22, payable on the 14th day of each month, beginning June 14, 2021. A true and correct copy of EFA No. 2 is attached as **Exhibit B** and is incorporated here by reference.

1 32. The last payment received by Balboa was credited toward the monthly
2 payment due for November 14, 2023. Therefore, on or about December 14, 2023,
3 Montante breached EFA No. 2 by failing to make the monthly payment due on that
4 date. Defendant Montante's failure to make timely payments is a default under the
5 terms of EFA No. 2.

6 33. In accordance with EFA No. 2, and as a proximate result of
7 Montante's default thereunder, Balboa declared the entire balance of the payments
8 under EFA No. 2 to be immediately due and payable to Balboa. Therefore, there
9 became due the sum of \$49,742.70. This amount is exclusive of interest, attorneys'
10 fees and costs, no portion of which has been paid by Montante.

11 34. Balboa has performed all of the terms, conditions, and covenants
12 required to be performed by it under the terms of EFA No. 2, except as excused or
13 prevented by the conduct of Montante.

14 35. In addition, the terms of EFA No. 2 provide that Montante is liable to
15 Balboa for late charges on all payments not made in a timely manner. As of the
16 date of the filing of Balboa's Complaint, late charges in the sum of \$255.82 are
17 now due and owing.

18 36. As a proximate result of Montante's breach of EFA No. 2, Balboa has
19 been damaged in the total sum of \$49,998.52, plus prejudgment interest from
20 December 14, 2023, until the entry of judgment herein.

21 37. Further, under the terms of EFA No. 2, Montante promised to pay all
22 costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement
23 of EFA No. 2. Therefore, Balboa requests the Court award Balboa its reasonable
24 attorneys' fees and costs as against Montante.

25 38. EFA No. 2 also provides Balboa the remedy of possession of
26 Collateral No. 2 and to obtain an order that Balboa may, in accordance with
27 applicable state law, sell the remaining Collateral No. 2 and apply the net proceeds
28

1 from the sale to the remaining loan balance. Alternatively, if possession cannot be
2 had, Balboa is entitled to recover the value of Collateral No. 2.

3 **FOURTH CAUSE OF ACTION**

4 **(Breach of Guaranty No. 2)**

5 **(Against Steven and Shelly)**

6 39. Balboa alleges and incorporates by reference each and every allegation
7 contained above, inclusive, as though each were fully set forth here.

8 40. Concurrent with the execution of EFA No. 2, and in order to induce
9 Balboa to enter into EFA No. 2 with Montante, Steven and Shelly guaranteed, in
10 writing, the payment of the then existing and future indebtedness due and owing to
11 Balboa under the terms of EFA No. 2. A true and correct copy of the written
12 Personal Guaranty signed by Steven and Shelly ("Guaranty No. 2") is attached as
13 **Exhibit B (page 1)** and incorporated herein by reference.

14 41. Balboa has performed all the terms, conditions, and covenants required
15 to be performed by Balboa under the terms of Guaranty No. 2, except as excused or
16 prevented by the conduct of Steven and Shelly.

17 42. Following a default of Montante under the terms of EFA No. 2, Balboa
18 demanded Steven and Shelly make the payments required under EFA No. 2.
19 Steven and Shelly failed to meet Guaranty No. 2 obligations and make the
20 payments required under EFA No. 2.

21 43. Pursuant to the terms of Guaranty No. 2, the sum of \$49,998.52, plus
22 prejudgment interest from December 14, 2023, is due and payable to Balboa from
23 Steven and Shelly. This Complaint, in addition to previous demands, shall
24 constitute further demand upon Steven and Shelly to pay the entire indebtedness
25 due and owing from Montante to Balboa under the terms of EFA No. 2.

26 44. Under the terms of Guaranty No. 2, Steven and Shelly promised to pay
27 all costs, including reasonable attorneys' fees, incurred by Balboa in the
28 enforcement of EFA No. 2 and Guaranty No. 2. Therefore, Balboa requests the

1 Court award Balboa its reasonable attorneys' fees and costs, as against Steven and
2 Shelly.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Balboa prays for judgment against Defendants, and
5 each of them, as follows:

6 **On the First and Second Causes of Action:**

- 7 1. The principal sum \$61,182.95;
- 8 2. Prejudgment interest from November 29, 2023 to the date of entry of
judgment;
- 10 3. Late charges and non-sufficient charges in an amount to be proven at
trial;
- 12 4. An order to recover possession of Collateral No. 1, which is the
subject of EFA No. 1, or if Collateral No. 1 cannot be delivered, for its reasonable
value according to proof;

- 15 5. Reasonable attorneys' fees and costs;
- 16 6. Costs of suit as provided by law;

17 **On the Third and Fourth Causes of Action:**

- 18 1. The principal sum \$49,998.52;
- 19 2. Prejudgment interest from December 14, 2023 to the date of entry of
judgment;
- 21 3. Late charges and non-sufficient charges in an amount to be proven at
trial;
- 23 4. An order to recover possession of Collateral No. 2, which is the
subject of EFA No. 2, or if Collateral No. 2 cannot be delivered, for its reasonable
value according to proof;
- 26 5. Reasonable attorneys' fees and costs;

27 //

28 //

1 6. Costs of suit as provided by law;
2
3
4

5 DATED: January 16, 2024

SALISIAN | LEE LLP

6 By: 

7 Neal S. Salisian
Glenn R. Coffman
Jared T. Densen

8 Attorneys for Plaintiff
9 AMERIS BANK d/b/a BALBOA CAPITAL
10 CORPORATION

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28